13

Office - Supreme Court, U. S.
FILED
MAY 26 1952
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 84

GRADY IVEY,

Appellant,

vs.

STATE OF TEXAS

Appellee

APPEAL FROM THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

PRICE DANIEL,
Attorney General of Texas;

WILLIS E. GRESHAM,
Assistant Attorney General;

CALVIN B. GARWOOD, JR.,
Assistant Attorney General,
Attorneys for Appellee,
The State of Texas,
Capitol Station,
Austin, Texas.

INDEX

Subject Index

	Page
Statement in Opposition to Appellant's Statement of Jurisdiction and Motion to Dismiss or Affirm	1
Statement of Issues on Appeal	1
No Substantial Federal Question Is Presented by the Attempted Appeal	3

Table of Cases Cited

Avery v. *Alabama*, 308 U. S. 444	4
Brown v. *Mississippi*, 297 U. S. 278	4, 5
Carter v. *Illinois*, 329 U. S. 173	4
Cole v. *Arkansas*, 338 U. S. 345	4
Ex parte Frye, 156 S. W. 2d 531	3
Ex parte Sanford, 157 S. W. 2d 899	4
Sanford v. *Hill*, 316 U. S. 647	4
Snyder v. *Massachusetts*, 291 U. S. 97	5
Zucht v. *King*, 260 U. S. 174	5

Statutes Cited

Texas Penal Code (Vernon 1948) Article 1621b	1
Rules of the United States Supreme Court, Rule 12	5

IN THE COURT OF CRIMINAL APPEALS
STATE OF TEXAS

No. 25,517

GRADY IVEY,

Appellant,

vs.

STATE OF TEXAS

Appellee

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

The appellee in the above entitled cause for its joint statement in opposition to appellant's statement as to the jurisdiction herein, and in support of appellee's motion to dismiss or affirm, would respectfully show the following:

I. Statement of Issues on Appeal

The primary question sought to be presented in this appeal is appellant's claim that a Texas statute, Article 1621b, Texas Penal Code (Vernon 1948), is invalid. Appellant contends that this statute denies him equal protection of the laws, in violation of the Constitution of the United States. The statute renders it illegal for any person to prevent, by force or violence, another from engaging in his

lawful vocation. The pertinent portions of the statute provide:

> "Section 1. It shall be unlawful for any person by the use of force or violence, or threat of the use of force or violence, to prevent or to attempt to prevent any person from engaging in any lawful vocation within this State. Any person guilty of violating this Section shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by confinement in the State Penitentiary for not less than one year nor more than two (2) years.
>
> "Sec. 2. It shall be unlawful for any person acting in concert with one or more other persons to assemble at or near any place where a 'labor dispute' exists and by force or violence prevent or attempt to prevent any person from engaging in any lawful vocation, or for any person, acting either by himself, or as a member of any group or organization, or acting in concert with one or more other persons, to promote, encourage, or aid any such unlawful assemblage. Any person guilty of violating this Section shall be deemed guilty of a felony, and upon conviction thereof shall be punished by confinement in the State Penitentiary for not less than one year, nor more than two (2) years.
>
> "Sec. 3. The term 'labor dispute' as used in this Act shall include any controversy between an employer and two (2) or more of his employees concerning the terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment."

It is urged that this law subjects members of labor unions, solely because of their union affiliation, to a harsher penalty than is imposed upon non-union persons for the perpetration of the same acts of violence. As is stated in footnote 1, page 3, of appellant's statement of jurisdiction, the validity of this statute under the constitutional guaranty of equal protection of the laws is the major issue raised in this

appeal. Appellant's assignments of errors also sets forth a number of subsidiary points; however, most of these are but facets of the major issue stated above.

Of secondary importance is appellant's contention that he was denied due process of law by the manner in which the prosecution was allowed to prove the criminal intent necessary to render him amenable to conviction under the statute in question, *i. e.*, the intent to violently interfere with the right of another to practice his lawful vocation. In other words, it is urged that the element of intent was proven by inadequate evidence and that, therefore, appellant was convicted without due process of law.

These claims appellee denies, and the Texas Court of Criminal Appeals, in the opinion and judgment here challenged, determined the questions so raised adversely to appellant.

II. No Substantial Federal Question Is Presented by the Attempted Appeal

The question raised by appellant's major issue was clearly presented to the Texas Court of Criminal Appeals and decided by that Court on the basis of the Federal Constitution. Some years ago the validity of the statute in question was challenged on the same ground that is here presented, and it was held to be constitutional. *Ex parte Frye*, 143 Tex. Crim. 9, 156 S. W. 2d 531 (1941). It was there held that the equal protection clause of the Federal Constitution does not take from a state the power to classify in the exercise of police power, but rather that it allows the state a wide scope of discretion in this respect. As authority for this proposition, the Court cited *Truax* v. *Corrigan*, 257 U. S. 312 (1921). Equal protection of the laws requires only that all persons coming within the purview of a particular statute must be treated in the same fashion. It does

not forbid a reasonable classification, and certainly there is no arbitrary or invidious discrimination imposed against anyone by the statute under consideration here.

On the same day that the Texas Court of Criminal Appeals delivered its opinion in the *Frye* case, it also decided a companion case in which the same issues were raised. *Ex parte Sanford,* 144 Tex. Crim. 430, 157 S. W. 2d 899 (1941). This latter case was appealed to the Supreme Court of the United States, which dismissed the appeal for want of a substantial Federal question. *Sanford* v. *Hill,* 316 U. S. 647 (1942). More recently, this Court unanimously upheld the validity of a similar statute of another state. *Cole* v. *Arkansas,* 338 U. S. 345 (1949). Thus it may be seen that the major issue in this appeal has been conclusively resolved against appellant by this Court and the Courts of Texas.

The only other issue of importance presented in this appeal has likewise been resolved against the appellant. In asserting that he was denied due process of law by the manner in which the Texas Courts permitted his criminal intent to be proven, appellant overlooks the well established principle that state courts have sole jurisdiction to administer state criminal laws. The law regarding the effect of the Fourteenth Amendment upon state judicial proceedings is quite clear. It does not limit the power of a state to deal with crimes committed within its borders, "and it was not intended to bring to the test of a decision of this Court every ruling made in the course of a state trial." *Avery* v. *Alabama,* 308 U. S. 444, 446, 447 (1940).

A state is free to regulate the procedure of its courts in accordance with its own conception of social policy and fairness without infringement of the due process clause, unless some fundamental principle of justice has been violated. *Carter* v. *Illinois,* 329 U. S. 173 (1946); *Brown* v.

Mississippi, 297 U. S. 278 (1936); *Snyder* v. *Massachusetts*, 291 U. S. 97 (1934). Appellant has presented no violation of any such fundamental principle in the proceedings of which he complains.

It is therefore respectfully submitted that the questions presented in this appeal have long ago so definitely been determined that no substantial Federal question is raised which would entitle appellant to invoke the jurisdiction of the Supreme Court of the United States. *Zucht* v. *King*, 260 U. S. 174 (1922); Rule 12, Rules of the United States Supreme Court.

WHEREFORE, appellee respectfully moves that the within appeal be dismissed or that the judgment of the Court of Criminal Appeals of the State of Texas be affirmed.

(S.) PRICE DANIEL,
Attorney General of Texas;
WILLIS E. GRESHAM,
Assistant Attorney General;
CALVIN B. GARWOOD, JR.,
Assistant Attorney General,
Attorneys for Appellee,
The State of Texas,
Capitol Station,
Austin, Texas.